

The government argues that Mr. Foxx's sentence was determined by a deviation from the mandatory minimum, not by the sentencing guidelines. However, the government's motion for

downward departure permitted this Court to impose a sentence below the mandatory minimum. Therefore, the mandatory minimum no longer constituted the bottom of the guideline range and in determining the appropriate sentence reduction below the mandatory minimum, this Court took into account, among other factors, the actual guideline range which would have been applicable but for the mandatory minimum. Mr. Foxx's actual sentence of 66 months, at least to some extent, was influenced by and "based [in part] on a sentencing range that has been subsequently lowered" within the meaning of 18 U.S.C. § 3582(c)(2).

Based on the amended guideline range, this Court impose an amended sentence that is in proportion to the current sentence. The Court hereby sentences Mr. Foxx to **time served plus ten days**. Accordingly, Defendant's motion to reduce sentence is GRANTED.

IT IS SO ORDERED.

Signed: July 31, 2008

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

